

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re application of: Steve Dispensa et al.

Confirmation No.: 1819

Application No.: 09/981,977

Group No.: 2155

Filed: 10-17-2001

Examiner: Asad M. Nawaz

For: PROBE DEVICE FOR TESTING A BROADBAND WIRELESS SYSTEM

**Mailstop: Appeal Brief - Patents**

Commissioner for Patents

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**REPLY BRIEF**

In response to the Examiner's Answer dated June 11, 2008 (hereinafter "the Examiner's Answer"), please consider the following remarks.

## Remarks

The following remarks are presented in response to the “Response to Argument” section of the Examiner’s Answer, using the section designators A-E employed therein. (Pages 8-11 of the Examiner’s Answer.)

A

Regarding independent claims 1, 21 and 41, the Examiner’s Answer indicates at the beginning of page 9 that “[w]ith regard to the probe device and the wireless broadband router being located on a customer premises, Giroir teaches a *wireless* software Cisco router handling broadband traffic.” (Emphasis supplied.) The Examiner’s Answer further quotes column 2, line 67, to column 3, line 7, of Giroir to assert that the TN3270 Client software runs within a customer’s workstation. (Second paragraph of page 9 of the Examiner’s Answer.) However, as indicated in the Appeal Brief of November 6, 2006 (hereinafter “the Appeal Brief”), the TN3270 client is not the probe client discussed in Giroir, and thus cannot teach or suggest the probe device of claims 1, 21, and 41. (See Fig. 10, showing groups of TN3270 clients 1001-1004 located separately from the IP network 1005 containing the availability and response time probes 1010.) Also, Giroir does not appear to teach or suggest that any routers discussed therein are wireless.

The Examiner’s Answer further alleges that “Giroir also discloses that it is desirable in the interest of accuracy to have each device *on the same premises* (see col 10, lines 4-10).” (Second paragraph of page 9 of the Examiner’s Answer; emphasis supplied.) (The Appellant respectfully believes that the intended citation from Giroir is actually column 12, lines 3-10, which discusses the proximity of a Distributed Measurement System to a group of end users.) The Appellant respectfully disagrees with the allegation, as Giroir instead states that “Distributed Measurement Systems must be *physically located as close as possible to the group of end users* as possible because the measured response time integrates the network delays.” (Column 12, lines 4-8; emphasis supplied.) Giroir further indicates that “[i]t is not mandatory to have one dedicated Distributed Measurement System per group of users. A particular Distributed Measurement System may provide accurate measurement data for *multiple groups of users*, provided that the groups are close enough.” (Column 12, lines 15-18; emphasis supplied.) Thus,

at no point does Giroir indicate that the Distributed Measurement Systems, which include the availability and response time probes 1010 discussed therein, are co-located with the end-user devices. Instead, Giroir specifically indicates that each Distributed Measurement System 1009 is located *in an IP network 1005* coupling one or more groups of user clients 1001-1004 to the TN3270 servers 1008. (See Fig. 10.) Further, each of the groups of clients 1001-1004 may be located in a different city, with none of these locations including a Distributed Measurement System. (See column 11, lines 51-64.)

Thus, in light of the preceding discussion, the Appellant contends that Giroir does not teach or suggest a probe device and a wireless broadband router being located on a customer premises, as set forth in claims 1, 21, and 41, and such indication is respectfully requested.

Claims 4-20 depend from independent claim 1, claims 24-40 depend from independent claim 21, and claims 44-60 depend from independent claim 41, thus incorporating the provisions of their associated independent claims. Thus, the Appellant asserts that claims 4-20, 24-40, and 44-60 are allowable for at least the reasons presented above in support of claims 1, 21, and 41, and such indication is respectfully requested.

## B

Regarding the bulk file transfer test of claims 6-8, 26-28, and 46-48, the Examiner's Answer indicates that since a bulk file transfer test requires only the retrieval of two files, Giroir shows such a test by way of receiving an application welcome screen from each of multiple applications in response to a connection request from a probe to each of the applications. (Pages 9 and 10 of the Examiner's Answer.)

The Appellant respectfully disagrees. Giroir employs these actions to determine the *availability and response time* of each TN3270 server supplying the connections between the TN3270 clients and the application. (See, generally, column 10, lines 17-64.) As discussed in the Appeal Brief, the disclosure of separate instances of availability and response time testing across multiple applications, as discussed in Giroir, does not teach or suggest a bulk file transfer test, which involves measuring *the overall transfer time of a set of files* communicated over a network. (See, for example, Fig. 12; and page 33, lines 3-16, of the present application.)

Thus, based on at least these additional reasons, the Appellant respectfully asserts that Giroir does not teach or suggest the bulk file transfer test of claims 6-8, 26-28, and 46-48, and such indication is respectfully requested.

#### C

The Examiner's Answer further alleges that Giroir teaches performance information including download speed, as set forth in claims 18, 38, and 58, by way of Giroir's availability and response time measurement. (Page 10 of the Examiner's Answer.)

The Appellant respectfully disagrees. As indicated in the Examiner's Answer, "[t]he Probe Client 702 times how long the request/response survey flow takes *to establish the connection* and to receive the Application Welcome Screen." (Column 10, lines 26-28, of Giroir; emphasis supplied.) Since the time to establish the connection is inevitably included in the Giroir timing measurement, and since such time is variable, the Giroir test cannot measure the download speed of the Application Welcome Screen as a performance measurement. Instead, Giroir determines the overall availability and response time of the TN3270 server involved.

Thus, based on at least the foregoing additional reasons, the Appellant contends that Giroir does not teach or suggest the download speed performance information of claims 18, 38, and 58, and such indication is respectfully requested.

#### D

With respect to the forward error correction test of claims 12, 32, and 52, the Examiner's Answer asserts that such testing is conducted inherently by numerous protocols. (Page 10 of the Examiner's Answer.) The Examiner's Answer also cites Giroir as an example, indicating that since Giroir mentions the IP protocol in its Abstract, and that the data link layer of the IP protocol automatically performs error detection and correction, that error detection and correction testing is conducted. (Id.)

The Appellant respectfully disagrees. While error detection and correction may occur in some communication protocols, forward error correction *testing* is not disclosed in Giroir or any

other reference cited during prosecution of the present application, much less such testing as performed by a probe device as set forth in claims 12, 32, and 52.

Thus, for at least the foregoing additional reasons, the Appellant contends that Giroir does not teach or suggest the forward error correction test of claims 12, 32, and 52, and such indication is respectfully requested.

*E*

Regarding claims 13, 33, and 53, which provide for an out-of-lock indicator test, and claims 14, 34, and 54, which provide for the out-of-lock indicator test including the determination of the presence of a clean Quadrature Amplitude Modulation (QAM) signal, the Examiner's Answer cites column 8, lines 10-40, of Fijolek, asserting that "Fijolek conducts an out-of-lock test by ensuring the type of frequency being used." (Page 11 of the Examiner's Answer.)

The Appellant respectfully disagrees, as Fijolek does not appear to teach or suggest the operation of "ensuring the type of frequency being used," as suggested in the Examiner's Answer. The Appellant further questions what connection such an operation has to an out-of-lock indicator test. More generally, as indicated in the Appeal Brief, Fijolek does not teach or suggest any kind of out-of-lock indicator test for any kind of modulation technique, including QAM. While Fijolek mentions the use of QAM, Fijolek does not mention explicit *testing* of any particular feature of that modulation technique, nor is such testing inherent in that disclosure.

Thus, in light of these additional reasons, the Appellant contends that Fijolek does not teach or suggest the out-of-lock indicator test of claims 13, 14, 33, 34, 53, and 54, and such indication is respectfully requested.

**Conclusion**

In light of the foregoing remarks, the Appellant submits that the final rejections of claims 1, 4-21, 24-41, and 44-60 of the present application are erroneous, and respectfully requests their reversal.

The Appellant believes no fees are due with respect to this filing. However, should the Office determine fees are necessary, the Office is hereby authorized to charge Deposit Account No. 21-0765 accordingly.

Respectfully submitted,

Date: 08/11/2008

/Kyle J. Way/

**SIGNATURE OF PRACTITIONER**

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